


Claims 1, 2, 5 and 11 were rejected under the judicially created doctrine of obviousness type double patenting with respect to the claims of U.S. Patent No. 6,313,119. The Examiner deemed that the claims are not patentably distinct on the basis that claim 9 of the references reads on a physiologically tolerable salt thereof which, in the Examiner's opinion, reads on the instant hemifumarate salt of Formula I.

Applicants respectfully traverse this ground of rejection since the claims are believed to be patentably distinct over the claims of U.S. Patent No. 6,313,119. It should be noted that Applicants are claiming a specific hemifumarate salt of a specific compound. As noted on page 4 of the application as filed, Applicants' specific salt of a hemifumarate has the advantageous physiochemical properties such as non-hygroscopicity and stability which could not be foreseen and that it can be easily isolated by precipitation from a reaction solution in the synthesis process which was not possible with the corresponding propionate since it could not be crystallized with other acids or precipitated therewith. Therefore, they could be prepared on an industrial scale in a feasible cost and labor effective manner which the present claims can be. Therefore, it is deemed that Applicants' specific product is patentably distinct over the compounds of the reference cited by the Examiner. Withdrawal of this ground of rejection is requested.

In view of the above remarks, it is believed that the claims clearly point out Applicants' patentable contribution and favorable reconsideration of the application is requested.

Respectfully submitted,
Muserlian, Lucas and Mercanti



Charles A. Muserlian, 19,683
Attorney for Applicants
Tel.# (212) 661-8000

CAM:ds
Enclosure